

# EXHIBIT 10

**WAESCHE, SHEINBAUM & O'REGAN, P.C.**

Attorneys for the Plaintiff

111 Broadway, Suite 401

New York, New York 10006

Telephone: (212) 227-3550

John R. Foster (JF3635)

**ECF CASE**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**PRESTIGIOUS SHIPPING CO. LTD.,**

**Plaintiff,**

**-against-**

**AGROCORP INTERNATIONAL PTE LTD.,**

**Defendant.**

**AFFIDAVIT IN OPPOSITION  
TO MOTIONS TO VACATE  
MARITIME ATTACHMENT**

STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK )

JOHN R. FOSTER, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and am an officer of Waesche, Sheinbaum & O'Regan, P.C., attorneys for the Plaintiff herein. I submit this affidavit in opposition to the pending motions by Defendant Agrocrop International Pte. Ltd. and non-party Indian Bank to vacate the attachment of funds at American Express Bank.

2. Pursuant to the Court's Order of August 9, 2007, the Clerk issued Process of Maritime Attachment and Garnishment ("PMAG"). A true copy of the August 9 Order (signed by Chief Judge Wood) is attached hereto as Exhibit 1. A true copy of the PMAG is attached hereto as Exhibit 2.

3. On August 13 Michael Griffin of my office served copies of the August 9 Order and the PMAG by hand on the offices of Zeichner Ellman & Krause, LLP. That firm

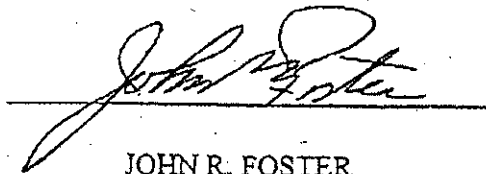
represents American Express Bank, and it accepts service of PMAG on behalf of American Express Bank. Thereafter, daily supplemental service was made on the Bank by email to Zeichner Ellman, again pursuant to the procedures established by the Bank.

4. On August 20, 2007, I received two telephone calls from Ms Martha Fletcher, a paralegal at the Zeichner Ellman firm. It is my understanding that Ms Fletcher handles the PMAGs at that firm. In the first telephone call she advised that, in response to the PMAG, American Express Bank had blocked two wire transfers described as originating from Agrocorp in Singapore. The amounts of these transfers were \$9,954.00 and \$604,036.93. Later that same day, she called again and advised that the Bank had blocked a further Agrocorp transfer of \$139,541.16.

5. Attached as Exhibit 3 are true copies of my emails to Ms Fletcher confirming the blocking of these three transfers.

6. I have given Ms Fletcher notice of the pendency of these motions and offered to provide Zeichner Ellman with copies of the various motion papers.

7. I have been advised by Plaintiff's solicitors that Prestigious Shipping is a company registered and located in Malta; that its commercial managers are Universal Navigation in Singapore; and that its technical managers are Marine Fleet Management located in Karachi, Pakistan.



JOHN R. FOSTER

Subscribed and sworn to before me this  
4<sup>th</sup> day of September, 2007



Notary Public  
SHARON J. POYNTZ  
NOTARY PUBLIC, State of New York  
No. 43-4820992 Qualified in Richmond County  
Certificate Filed in New York County  
Commission Expires February 28, 2011

# EXHIBIT 11

**Owen Duffy**

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**From:** John R. Foster [j.foster@waeschelaw.com]  
**Sent:** Monday, October 01, 2007 6:08 PM  
**To:** Owen Duffy  
**Cc:** Laura Fares  
**Subject:** Prestigious Shipping v Agrocorp

Owen:

1. Please be advised that this afternoon Prestigious Shipping blocked \$1,407,228.97 at the Bank of America.
2. The EFT originated with James Richardson International Ltd. in Winnipeg, was for \$2.16 million, and was destined for Agrocorp.
3. I instructed the Bank to sequester \$1,407,228.97 and release the balance to Agrocorp.
4. As the Plaintiff's claim is now fully secured, I will stop the daily supplemental service on the various garnishee banks.

If you have any questions, please let me know.

John Foster

# EXHIBIT 12

CHALOS, O'CONNOR & DUFFY, LLP  
 Attorneys for Defendant,  
 Agrocorp International Pte. Ltd.  
 366 Main Street  
 Port Washington, New York 110050  
 Telephone: 516-767-3600  
 Telefax: 516-767-3605  
 Owen F. Duffy (OD-3144)  
 George E. Murray (GM-4172)

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

-----X  
 PRESTIGIOUS SHIPPING CO. LTD.,

Plaintiff,

- against -

AGROCORP INTERNATIONAL PTE. LTD.,

Defendant.  
 -----X

07 CV 7101 (CM)

**AMENDED ANSWER  
 WITH AFFIRMATIVE  
 DEFENSES AND  
COUNTERCLAIM**

Defendant, AGROCORP INTERNATIONAL PTE. LTD., (hereinafter  
 "AGROCORP"), by and through its attorneys, CHALOS, O'CONNOR & DUFFY, LLP,  
 and having entered a restrictive appearance pursuant to Rule E (8) of the Supplemental  
 Rules for Certain Admiralty and Maritime Claims, hereby Answers the Verified Complaint  
 of Plaintiff upon information and belief as follows:

1. Admits the allegations contained in Paragraph "1" of Plaintiff's Verified Complaint.
2. Admits that Plaintiff PRESTIGIOUS SHIPPING CO. LTD. (hereinafter "PRESTIGIOUS") is located with a business address and presence in

Singapore. Except as so specifically admitted, defendant AGROCORP denies knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph "2" of Plaintiff's Verified Complaint.

3. Admits the allegations contained in Paragraph "3" of Plaintiff's Verified Complaint.
4. Admits the allegations contained in Paragraph "4" of Plaintiff's Verified Complaint.
5. Admits that PRESTIGIOUS agreed to let the vessel M/V PRESTIGIOUS to AGRCORP for the carriage of a cargo of sugar from Brazil to Bangladesh in consideration of an agreed amount of freight. Except as so specifically admitted, the Defendant AGROCORP denies the remaining allegations set forth in Paragraph "5" of Plaintiff's Verified Complaint.
6. Admits that the vessel, M/V PRESTIGE, was duly delivered, loaded with cargo and the voyage performed. Except as so specifically admitted, the Defendant AGROCORP denies the remaining allegations set forth in Paragraph "6" of Plaintiff's Verified Complaint.
7. Denies the allegations contained in Paragraph "7" of Plaintiff's Verified Complaint.
8. Denies the allegations contained in Paragraph "8" of Plaintiff's Verified Complaint.
9. Denies the allegations contained in Paragraph "9" of Plaintiff's Verified Complaint.



10. Admits the allegations contained in Paragraph "10" of Plaintiff's Verified Complaint.
11. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph "11" of Plaintiff's Verified Complaint.
12. Admits that Defendant AGROCORP cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure. Except as so specifically admitted, the Defendant AGROCORP denies the remaining allegations set forth in Paragraph "12" of the Verified Complaint are denied.
13. Denies the allegations contained in Paragraph "13" of Plaintiff's Verified Complaint.

**AS AND FOR AFFIRMATIVE DEFENSES TO THE  
CLAIMS SET FORTH IN THE VERIFIED COMPLAINT, DEFENDANT  
AGROCORP ALLEGES UPON INFORMATION AND BELIEF**

**First Separate and Complete Affirmative Defense**

14. The Verified Complaint fails to state a claim against the Defendant AGROCORP upon which relief may be granted.

**Second Separate and Complete Affirmative Defense**

15. This Honorable Court lacks personal jurisdiction over Defendant AGROCORP.

**Third Separate and Complete Affirmative Defense**

16. The Plaintiff, PRESITIGIOUS, has not secured the attachment of any property belonging to the Defendant AGROCORP within this district and, therefore, the Honorable Court lacks *quasi in rem* jurisdiction over the property of the Defendant AGROCORP.

**Fourth Separate and Complete Affirmative Defense**

17. In the alternative, the Plaintiff, PRESTIGIOUS, has improperly secured the attachment of property belonging to the Defendant, AGROCORP, within this district and, therefore, the Honorable Court lacks *quasi in rem* jurisdiction over the property of the Defendant AGROCORP.

**Fifth Separate and Complete Affirmative Defense**

18. The terms of the Charter Party and/or other governing contracts between the Plaintiff, PRESTIGIOUS, and the Defendant, AGROCORP, require that any disputes between the parties are to be arbitrated in London pursuant to English law.

**Sixth Separate and Complete Affirmative Defense**

19. The forum is inconvenient and Plaintiff's Verified Complaint should be dismissed pursuant to the doctrine of *forum non conveniens*.

**Seventh Separate and Complete Affirmative Defense**

20. Both the Plaintiff and the Defendant are foreign parties without any tangible connection to the United States and, likewise, the underlying dispute, i.e. carriage of cargo from South America to Bangladesh on board a ship registered in Malta, does not have any tangible connection with the United States and, therefore, this Honorable Court should exercise its discretion and decline jurisdiction.

**Eighth Separate and Complete Affirmative Defense**

21. The Defendant, AGROCORP, is not liable to Plaintiff, PRESTIGIOUS, on the causes of action alleged in the Plaintiff's Verified Complaint and, therefore, the Plaintiff has failed to set forth a valid *prima facie* admiralty claim.

**Ninth Separate and Complete Affirmative Defense**

22. Any damages claimed by Plaintiff and any delay with regard to the discharge of cargo from the M/V PRESTIGIOUS at Chittagong, Bangladesh, which Defendant AGROCORP denies, were caused in part or in whole by the faults, actions or omissions of the Plaintiff, or the Plaintiff's own breaches of the Charter Party dated February 21, 2005, or by reason of causes from which the Defendant AGROCORP is not responsible under the terms and conditions of the Charter Party dated February 21, 2005 and, therefore,

Defendant AGROCORP is not responsible to the Plaintiff for any of the damages claimed in the Verified Complaint.

**Tenth Separate and Complete Affirmative Defense**

23. Any damages sustained by the Plaintiff, as alleged in the Plaintiff's Verified Complaint were proximately, directly, and solely caused by the acts of third persons over whom Defendant AGROCORP did not have direction or control or was, otherwise, not responsible for pursuant to the terms and conditions of the Charter Party dated February 21, 2005.

**Eleventh Separate and Complete Affirmative Defense**

24. All of the Plaintiff PRESTIGIOUS' claims set forth in the Verified Complaint are barred pursuant to the terms and conditions of various settlement agreements that the Plaintiff PRESTIGIOUS entered into with various parties at the Port of Chittagong, Bangladesh pursuant to which the Plaintiff PRESTIGIOUS accepted responsibility for cargo damaged by sea water during the voyage from South America to Bangladesh, the Plaintiff PRESTIGIOUS accepted responsibility for the destruction of the damaged cargo and the Plaintiff PRESTIGIOUS paid monies in settlement to the receivers of the damaged cargo.

**Twelfth Separate and Complete Affirmative Defense**

25. Plaintiff herein has failed to mitigate its damages.

**Thirteenth Separate and Complete Affirmative Defense**

26. This Answer is made without waiver of any jurisdictional defenses or rights to arbitrate that may exist between the parties.

**AS AND FOR A FIRST COUNTERCLAIM  
AGAINST PLAINTIFF PRESTIGIOUS SHIPPING CO. LTD., DEFENDANTS  
ALLEGE UPON INFORMATION AND BELIEF**

27. Defendant AGROCORP hereby repeats and realleges each and every response made in this Amended Verified Answer to the allegations of the Verified Complaint with the same force and effect as if fully set forth herein.
28. Plaintiff PRESTIGIOUS had an obligation to deliver cargo of sugar at issue in this matter in the same good order and condition as it was in when shipped.
29. Plaintiff PRESTIGIOUS breached its obligation to deliver the cargo of sugar at issue in this matter in the same good order and condition as it was in when shipped.
30. Because of Plaintiff's breach of its obligation to deliver the cargo of sugar at issue in this matter in the same good order and condition as it was in when shipped, the receivers of the cargo of sugar withheld payment of a sum of US\$583,180.46 from Defendant AGROCORP, which sum AGROCORP would have received but for the breach of Plaintiff.

31. Under these circumstances, and in the event that the Honorable Court determines that the Plaintiff PRESTIGIOUS has a valid maritime attachment of the Defendant AGROCORP's property, the Defendant AGROCORP requests that the Honorable Court enters an Order directing the Plaintiff PRESTIGIOUS, pursuant to Rule E(7)(a) of the Supplemental Rules for Certain Admiralty and Maritime Claims to provide US\$583,180.46 as counter-security for the above-stated first counterclaim.

**AS AND FOR A SECOND COUNTERCLAIM  
AGAINST PLAINTIFF PRESTIGIOUS SHIPPING CO. LTD., DEFENDANTS  
ALLEGE UPON INFORMATION AND BELIEF**

32. Defendant AGROCORP hereby repeats and realleges each and every response made in this Amended Verified Answer to the allegations of the Verified Complaint with the same force and effect as if fully set forth herein.
33. All of the alleged breaches of charter party and damages, as alleged by the Plaintiff PRESTIGIOUS in its Verified Complaint, were resolved pursuant to settlement agreements entered into by the Plaintiff PRESTIGIOUS on or about August 7, 2005 with various third parties, including the receivers of the sugar cargo shipped on board the M/V PRESTIGIOUS from South America to Bangladesh, pursuant to which the Plaintiff PRESTIGIOUS paid the sums of \$1,100,000.00, and a further \$500,000.00, as compensation for delays in discharging the sugar cargo, damages to the

sugar cargo caused by the vessel and costs to discharge damaged cargo at Bangladesh, to receivers East West Trading and Musa and Sons.

34. On June 30, 2006, the Plaintiff PRESTIGIOUS, in breach of its settlement agreements, accused third party receivers East West Trading and Musa and Sons of overstating their respective claims for damages and the Plaintiff PRESTIGIOUS sought reimbursement from East West Trading and Musa and Sons in the amount of \$1,146,393.00<sup>1</sup>, failing which the Plaintiff PRESTIGIOUS threatened to initiate an action to recover that sum from the receivers in the Courts of Bangladesh.
35. As a result of Plaintiff PRESTIGIOUS' accusations against East West Trading and Musa and Sons, East West Trading have advised the Defendant, AGROCORP, that Plaintiff PRESTIGIOUS is in breach of the settlement agreement dated August 7, 2005 and, consequently, East West Trading is now asserting a claim against the Defendant AGROCORP in the amount of \$1,205,016.30 with respect to specific quantities of cargo that was damaged in the M/V PRESTIGIOUS' number 1 and number 3 holds when the vessel arrived in Bangladesh for discharge.
36. As a result of Plaintiff PRESTIGIOUS' failure to deliver the cargo in sound condition and breach of its settlement agreement with the receivers in respect of damaged cargo, the Defendant AGROCORP is now unnecessarily and unreasonably exposed to liability to the receivers of the

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<sup>1</sup> Coincidentally, this is the very same sum that the Plaintiff PRESTIGIOUS seeks to recover from Defendant AGROCORP for demurrage.

cargo carried on board the M/V PRESTIGIOUS in the amount of \$1,205,016.30, plus interest and costs.

37. Plaintiff PRESTIGIOUS' actions with regard to the receivers of the cargo on board the M/V PRESTIGIOUS and its failure to deliver the cargo in a sound condition constitute a breach of the Plaintiff's obligations under the Charter Party dated February 21, 2005 and, therefore, the Plaintiff PRESTIGIOUS will be held liable to Defendant AGROCORP for any sums that the receivers of the cargo may recover from the Defendant AGROCORP.
38. In addition to the amount of \$1,205,016.30, the Defendant AGROCORP has sustained additional damages from Plaintiff PRESTIGIOUS' breach of the charter party including: \$125,000.00 for late payment of invoices from receivers; a discount in the amount of \$6.50 per metric ton for a total of \$139,750.00 that was provided to the receivers as a consequence of the delays in discharge caused by the Plaintiff PRESTIGIOUS' breach of the charter party.
39. Under the circumstances, and in the event that the Honorable Court determines that the Plaintiff PRESTIGIOUS has a valid maritime attachment of the Defendant AGROCORP's property, the Defendant AGROCORP requests that the Honorable Court enters an Order directing the Plaintiff PRESTIGIOUS, pursuant to Rule E(7)(a) of the Supplemental Rules for Certain Admiralty and Maritime Claims to provide



US\$1,469,766.30 as counter-security for the above-stated second counterclaim.

**AS AND FOR A THIRD COUNTERCLAIM  
AGAINST PLAINTIFF PRESTIGIOUS SHIPPING CO. LTD., DEFENDANTS  
ALLEGE UPON INFORMATION AND BELIEF**

40. Defendant AGROCORP hereby repeats and realleges each and every response made in this Amended Verified Answer to the allegations of the Verified Complaint with the same force and effect as if fully set forth herein.
41. Defendant AGROCORP has asserted counterclaims for US\$583,180.46 and US\$1,205,026.30 in its "Amended Points of Defence and Counterclaim" in the ongoing arbitration in London, England.
42. As stated by Plaintiff PRESTIGIOUS in its Verified Complaint at paragraph 13(d), interest, costs, arbitrator fees and attorney fees are recoverable in arbitration under English law.
43. As Plaintiff PRESTIGIOUS as alleged these costs to be US\$250,000.00 on its claim of US\$1,910,761.06, Defendant AGROCORP, having alleged counterclaims in the London arbitration of US\$1,788,206.76, is entitled to the same amount, US\$250,000.00, as counter-security for its counterclaims now pending in arbitration in London, England regarding this dispute.

**WHEREFORE,** Defendant AGROCORP INTERNATIONAL PTE. LTD. demands judgment:

- a) Dismissing the Complaint herein, together with costs and disbursements of this action;
- b) An Order vacating the Writ of Attachment and Garnishment issued against the property of the Defendant AGROCORP;
- c) An Order directing all garnishees holding property of the Defendant AGROCORP to release said property to the Order of AGROCORP; or, in the alternative,
- d) In the event this Honorable Court does not vacate the Writ of Attachment and Garnishment against the property of the Defendant, AGROCORP, then the Honorable Court should enter an Order pursuant to Supplemental Rule E(7)(a) directing PRESTIGIOUS to post US\$583,180.46 as counter-security in favor of Defendant, AGROCORP, for the above stated first counterclaim;
- e) In the event this Honorable Court does not vacate the Writ of Attachment and Garnishment against the property of the Defendant, AGROCORP, then the Honorable Court should enter an Order pursuant to Supplemental Rule E(7)(a) directing PRESTIGIOUS to post US\$1,469,766.30 as counter-security in favor of Defendant, AGROCORP, for the above stated second counterclaim;
- f) In the event this Honorable Court does not vacate the Writ of Attachment and Garnishment against the property of the Defendant, AGROCORP, then the Honorable Court should enter an Order pursuant to Supplemental Rule E(7)(a) directing PRESTIGIOUS to post US\$250,000.00 as counter-security in favor of Defendant, AGROCORP, for the above stated third counterclaim;
- g) An Order awarding Defendant AGROCORP its legal expenses and attorneys fees incurred in defending the present action; and,

- h) Such other, additional and further relief as the Court may deem to be just and proper in the circumstances of this case.

Dated: Port Washington, New York  
October 2, 2007

CHALOS O'CONNOR & DUFFY  
Attorneys for Defendant,  
AGROCORP INTERNATIONAL PTE. LTD.

By: 

Owen F. Duffy (OD-3144)  
George E. Murray (GM-4172)  
366 Main Street  
Port Washington, New York  
11050  
Tel: 516-767-3600  
Telefax: 516-767-3605  
Email: ofd@codus-law.com

To: Via ECF  
Waesche, Scheinbaum & O'Regan, P.C.  
Attorneys for the Plaintiff,  
PRESTIGIOUS SHIPPING CO. LTD.  
111 Broadway, 4<sup>th</sup> Floor  
New York, NY 10006

Attn: John R. Foster, Esq

**CHALOS, O'CONNOR & DUFFY, LLP**  
Attorneys for Defendant,  
Agrocorp International Pte. Ltd.  
366 Main Street  
Port Washington, New York 110050  
Telephone: 516-767-3600  
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Owen F. Duffy (OD-3144)  
George E. Murray (GM-4172)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PRESTIGIOUS SHIPPING CO. LTD.,

**Plaintiff,**

- against -

AGROCORP INTERNATIONAL PTE. LTD.,

**Defendant.**

STATE OF NEW YORK

: SS.

COUNTY OF NASSAU

:

BEFORE ME, the undersigned authority, personally came and appeared Owen F. Duffy who, after being duly sworn, did depose and state:

That he is a partner in the law firm of Chalos, O'Connor & Duffy LLP, counsel for the Defendant, AGROCORP INTERNATIONAL PTE. LTD. (hereinafter "AGROCORP"), herein;

That he has read the foregoing Amended Answer with Affirmative Defenses and Counterclaim and knows the contents thereof; and

That he believes the matters to be true based on documents and information obtained from employees and representatives of the Defendant AGROCORP through its agents, underwriters and attorneys.

The reason that this verification was made by deponent and not by the Defendant AGROCORP is because Defendant AGROCORP is a foreign corporation, whose officers are not in this district, and whose verification cannot be obtained within the time constraints presented by the circumstances of this case.


Dated: Port Washington, New York  
October 2, 2007

CHALOS, O'CONNOR & DUFFY  
Attorneys for Defendant,  
AGROCORP INTERNATIONAL PTE. LTD.

By: 

Owen F. Duffy (OD-3144)  
366 Main Street  
Port Washington, New York 11050  
Telephone: 516-767-3600  
Telefax: 516-767-3605

Subscribed and sworn to before me this  
October 2, 2007

  
Notary Public, State of New York  
**GEORGE E. MURRAY**  
Notary Public, State of New York  
No. 02MU6108120  
Qualified in New York County  
Commission Expires April 12, 2008

# EXHIBIT 13

## HARIDASS HO & PARTNERS

ADVOCATES & SOLICITORS • • COMMISSIONERS FOR OATHS • • NOTARY PUBLIC

24 RAFFLES PLACE,  
#18-00 CLIFFORD CENTRE,  
SINGAPORE 048621

TEL: 6533 2323  
FAX: 65337029 (Not for service of Court documents)  
email: mail@hhp.com.sg

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### FACSIMILE

To : Mr Clive Aston + 44 207 0641633  
Mr S R Zaiwalla SZ/SR/1111 (Fax: +442074049473)

Date : 06 September 2007

Attention : From : R Srivathsan

Your Ref : Our Ref : RS/47527/2005/sz

Cc : Joseph Tan Jude Benny (Fax: 62257827)  
Ref: 2006155418JB/SA/hh  
Clients Attn: Mr Ravi / Mr Vijay

Total Pages : 1 (including this page)

#### MV PRESTIGIOUS NOW KNOWN AS MV VICTORY 2

We refer to the above matter.

We are instructed to amend our clients' Defence and to also include a Counterclaim.

Attached is a proposed Amended Defence and Counterclaim and the documents in addition to those already tendered.

We seek your leave to have the same admitted.

We assume the Claimants will be given time to file an Amended Reply and Defence to Counterclaim and await the Tribunal's directions in this regard.

Regards



R. Srivathsan  
Writer's DID: 62301180  
Writer's Email: srivathsan@hhp.com.sg

